

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 5, 2001
at 10:05 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: Sen. Mike Halligan (D)

Members Absent: None.

Staff Present: Anne Felstet, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 216, HB 224, 2/22/2001
Executive Action: None

HEARING ON HB 216

Sponsor: REP. DENNIS HIMMELBERGER, HD 18, BILLINGS

Proponents: Tom Jacobson, representing himself
Gordon Vandiviere, Korner Stop owner
Ronna Christman, MT Petroleum Markets
Association
Mark Staples, MT Tavern Association

Opponents: Matt Dumas, representing himself
Mike Barrett, representing himself

Opening Statement by Sponsor:

REP. DENNIS HIMMELBERGER, HD 18, BILLINGS, opened on HB 216 by providing a packet of newspaper clippings and an email provided in support of the bill, **EXHIBIT(jus50a01)**. He said the function of the bill increased fines on minors attempting to purchase alcoholic beverages, increased fines in minor in possession of alcohol, and created a fine for a minor who attempted to purchase tobacco products. He said the primary purpose of the bill was to act as a deterrent to the youth in acquiring alcohol and tobacco products. It would also hopefully protect the lives of young people. The second reason for the bill attempted to close the penalties gap for minors attempting to purchase and those who sold to minors. It was a responsibility and a fairness issue.

Proponents' Testimony:

Tom Jacobson, representing himself, said he worked at Gateway Recovery Center in Great Falls. He supported the bill for the strategies it enhanced toward prevention efforts. By increasing penalties, it was proven that a direct and immediate impact would occur on the number of youth who used. In a study by the Office of Juvenile Justice, the changes in drinking laws had up to a 25% decrease in underage use. The same study said there were three specific elements to deterrence: 1) Severity; it hurt. The penalty needed to be severe enough to impact the youth. 2) Certitude; it would happen. The penalties must certainly happen for those who broke the law. 3) Celerity; it would happen now. HB 216 spoke to severity by increasing fines, it would be enough to discourage youth who used. The Substance Abuse and Mental Health Association produced a yearly national household survey. The results in 1999 put Montana #3 in the nation for adolescent binge alcohol use and #2 for illicit drug abuse. He didn't think that the severity of adolescent use was fully considered and how Montana sat in proportion to the rest of the country. By

increasing the fines on minors in possession and fines on minors attempting to purchase, it became an environmental strategy toward prevention. It changed the laws and norms associated with use. It also changed the community perception associated with minors in possession or minors who attempted to purchase in that increasing the fine raised the bar and set the standard that it was not an acceptable behavior. It sent a clear message to the youth. He said it was not a silver bullet, but it was part of an overall comprehensive strategy to addressing the problem. He felt the bill supported the youth and would have a direct impact on them.

Gordon Vandiviere, Korner Stop owner, provided his testimony, **EXHIBIT(jus50a02)** as well as four more letters of support from various convenience store owners: **EXHIBIT(jus50a03)**, **EXHIBIT(jus50a04)**, **EXHIBIT(jus50a05)**, and **EXHIBIT(jus50a06)**.

Ronna Christman, MT Petroleum Markets Association, said the combined membership represented about 80% of the operating convenience stores in Montana. They supported the bill to equalize the responsibility between sellers and consumers attempting to purchase products illegally. She said minors found convenience stores easier targets than other stores because of the work environment. She said clerks had a multi-task job with busy times that minors knew about. She also said fake IDs had greater sophistication. During the session when changes were made to cigarette and tobacco laws, the association didn't oppose the additional restrictions and penalties because they felt it was their responsibility in selling the products. The industry co-sponsored a series of educational seminars for managers, store owners, and clerks around the state regarding the sales of restricted products. This helped reduce the sale of restricted products to minors. However, minors were not only smart about buying them, but they also knew sanctions did not exist for attempting to purchase the products, especially for tobacco. She argued it was a game to know which merchants would and would not sell the products. Currently minors could be fined \$35 for possession of tobacco. They felt the system was out of balance and HB 216 addressed the knowing attempt to purchase the product and the responsibility should be shared between the consumer and the business owner.

Mark Staples, MT Tavern Association, said bars were subject to stings. Particularly in the venue of tobacco, owners asked about the purchasers' responsibility and were told they had immunity because they were involved in a sting. Currently, the law provided immunity regardless because no sanctions existed. He argued it was a one-sided game, with substantial fines for the business and it put their licenses in jeopardy. The fines against

the minor regarding tobacco were nil and alcohol fines were not substantial. He suggested putting more responsibility onto the minors instead of placing fines on the clerks, the bartenders, the stores, and the bars, and marks on the business's records toward losing their licenses.

Julie Millam, MT Christian Coalition, offered a statement in support of HB 216, **EXHIBIT(jus50a07)**.

Opponents' Testimony:

Matt Dumas, representing himself, provided his testimony in opposition to HB 216, **EXHIBIT(jus50a08)**.

Mike Barrett, representing himself, provided poetry and thoughts on the subject in **EXHIBIT(jus50a09)**.

Questions from Committee Members and Responses:

SEN. STEVE DOHERTY asked how many arrests there were in Montana on youth attempting to purchase alcohol in the last couple of years and also the number of arrests for youth who possessed tobacco. He wanted to know the priority law enforcement was making under the current law. **REP. HIMMELBERGER** said he didn't know that specific information, but would gather it. He referenced **exhibit (1)** that illustrated cooperation of the Billings police department and that they considered it a serious problem.

SEN. DOHERTY asked what happened to someone's record after conviction of attempting to purchase alcohol or tobacco.

REP. HIMMELBERGER said he would gather that information as well.

CHAIRMAN LORENTS GROSFIELD commented that the House amended it so that the fine was greater for those under 18. He wanted to know the logic behind it. **REP. HIMMELBERGER** responded that current statute was established that way. The reasoning was that the closer to legal age, the person should be treated differently.

Closing by Sponsor:

REP. HIMMELBERGER closed on HB 216. He said he didn't think the bill would eliminate teen drinking and tobacco abuse. However, it was a tool in the fight to help young people mature and enjoy full lives. He also noted this bill did not require a fiscal note.

{Tape : 1; Side : B}

HEARING ON HB 224

Sponsor: REP. JOAN HURDLE, HD 13, BILLINGS

Proponents: Debra Kottel, representing herself
 Betty Whiting, MT Association of Churches
 Scott Crichton, Executive Director of ACLU

Opponents: None

Opening Statement by Sponsor:

REP. JOAN HURDLE, HD 13, BILLINGS, opened on HB 224 by passing out an outline of the points to consider about the bill, **EXHIBIT (jus50a10)**. She said the bill had been watered down in the House, but it was still a very good idea. She said it was a bill for children of incarcerated parents because they were unintended victims of crime. The bill called for slight changes in current law. The treatment plan referred to the Child Protective Services protection plan, not a treatment plan for other circumstances. She said Child Protective Services made a treatment plan for problems in custody in cases of abuse and neglect. The parent had to complete the treatment plan before they could reclaim custody of their child. HB 224 added to the procedure that custody could not be terminated solely because of incarceration. If other factors were present, then custody could be terminated. She argued that studies found that the greatest factor in rehabilitation of prisoners were relationships; for women prisoners, that was relationships with their children. If prisoners were to have successful rehabilitation, then there had to be positive family reunification. She argued that children of prisoners were more likely to be incarcerated themselves as adults. If the problems were not dealt with, then the next generation of prisoners were being established. She commented on the fiscal note saying it had been eliminated after talking with **Warden Mahoney**. However, the changes were not reflected in the bill. Therefore, she requested changes to the PSI requirements on page 2, section 2. To eliminate the need for more staffing to accommodate the PSI, the judge would simply ask if minor children were involved. If they were, then a PSI would be done. Not every case would require a PSI. She said that change was agreed upon, but not reflected. She felt that if family reunification was utilized, then it would cut down on recidivism, saving money.

Proponents' Testimony:

Debra Kottel, representing herself, provided a packet of information regarding the Bureau of Justice Statistics Special

Report on "Incarcerated Parent and Their Children", **EXHIBIT(jus50a11)**. She said she was a professor at the University of Great Falls. She said a Woman in Crime class project regarding impact on women in correctional facilities resulted in a camp for children with incarcerated parents. The camp became reality 10 years ago and was still going. That experience highlighted that fact that these children had deep emotional wounds as well as were lower in terms of socioeconomic standards than other children their age. She felt they were this way because they were the victims of their parent's crime. She noted that when a child lost a parent to death, society supported the child, allowing proper grieving. In the case of losing a parent to divorce, it was rather common, so children could gain comfort from others in the same situation. However, if a parent was incarcerated, it was a family secret and taboo. The children in these cases felt shame, humiliation, and they suffered from a myriad of psychological problems backed up by data. She didn't think the bill would solve all the problems, but it was a step in a positive direction toward recognizing that there was a victim when parents went to prison. This bill would assist parents through parenting classes and would identify the children so they could obtain resources to help them.

Betty Whiting, MT Association of Churches, provided their positioning paper on corrections, **EXHIBIT(jus50a12)**. She felt the bill addressed the first two points of their statement. She said they believed children were the most precious resource and the state should help them toward healthy growth. She quoted from an article by the Child Welfare league, "Children with Parents Behind Bars", **EXHIBIT(jus50a13)**. The first three points, she said HB 224 addressed. She then read the 10 most frequent questions asked by the children. She felt HB 224 helped children answer those difficult questions. She read some other parts of the paper that would be addressed by HB 224 and urged support of the bill.

Sharon Hoff-Brodowy, Montana Catholic Conference, provided her testimony to Betty Whiting for submission, **EXHIBIT(jus50a14)**.

Scott Crichton, Executive Director of ACLU, said women's issues in prisons had been before the legislature since 1988-89. He said there was a strong commitment to women in prison and their families through bi-partisan support to construct a women's prison in Billings. However, it did not come to fruition and over the years, that support waned. Now, however, the legislature had the opportunity to move away from punitive to looking at rehabilitation and its human dignity. He mentioned that he had sung at the camp for the children with incarcerated parents and it was eye-opening because of the deprivation. Since they were so suppressed to normal childhood experiences, it was difficult to

get them to feel comfortable. He felt the human dignity component must be addressed in the corrections system. He said HB 224 was a small way to begin that process. He also attended an interim committee's sojourn to the county jail in Great Falls, the state prison. It was designed for no human contact. The facility had to be retrofitted to accommodate in-person lawyer visits. He also mentioned the Pine Hills policy of "no-touch". He argued the juveniles were there to heal and improve themselves, but were subjected to the policy that no one could touch them. He thought the future of corrections hinged on a re-evaluation of the human component, not only in the architecture, and how they're run, but also in the long-term consequences of families.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

CHAIRMAN LORENTS GROSFIELD questioned that the fiscal note disappeared because overnight visitations were struck from the bill. **Mike Ferriter, Administrator of Community Corrections Division for the Department of Corrections**, said the PSI was a concern for all felony offenders in the process of sentencing. He said it wasn't a bad idea, but would take about three probation and parole officers. That had been struck with the judge simply asking for the existence of minor children. In that case, then a PSI would be conducted and it would be appropriate and the department could manage the workload with existing resources.

{Tape : 2; Side : A}

SEN. RIC HOLDEN referred to the bill regarding, "incarceration alone could not be considered failure . . .to comply with. . . a treatment plan". He wanted to know what that meant. **REP. HURDLE** replied the Department of Public Health, Child Protective Services, made a treatment plan in cases of child abuse and neglect that required a parent to do a certain number of things before they could be reunited with their child. That was called a treatment plan. The addition stated that incarceration alone could not be considered reason to terminate custody. It could be an item of the treatment plan, but for incarceration alone, custody could not be terminated. She said currently, mothers lost their children because of incarceration alone. According to the bill, if other reasons existed to terminate custody, then custody could be terminated.

SEN. HOLDEN referred to page 4, lines 11-13. He wanted to know if an integration program was done currently; or was something that should be done. **Mr. Ferriter** said that type of work occurred at the Women's Prison. The bill intended to broaden it. The integration of children was a component of the female pre-release centers. However, there wasn't as much emphasis placed on children of male offenders. The bill helped bring attention to that matter. He felt there did need to be more focus on that in the prison setting as well as the pre-release setting in terms of male offenders, and mentioned **Warden Mahoney** spoke to the sponsor about placing more emphasis on that issue.

SEN. HOLDEN wanted to know how many tax dollars would be needed for the integration programs. **Mr. Ferriter** said at the Women's Prison, the integration programs were done by volunteers. From meeting with the two wardens, they indicated there would not be additional cost, but would utilize existing staff and some volunteers to work with the family program. He noted the new addition at the Women's Prison did allow some families to be together. The female pre-release centers were designed for interaction between mothers and children.

SEN. HOLDEN said that brought up another dimension to the bill. He questioned the volunteers' credentials to determine what should happen concerning the offenders' children, and what they did. **Mr. Ferriter** said the bill focused on the Women's Prison. He said a good history existed there with volunteers. A volunteer coordinator clearly screened anyone who chose to volunteer. He had heard there was a list of approximately 100 volunteers for the Women's Prison. He didn't think the program would be only volunteers, but a combination of trained social workers and counselors on staff. At the Montana State Prison, it could be more problematic. He didn't know of a volunteer program at the prison for men.

SEN. HOLDEN again questioned the fiscal note relating to male offenders, who did not have the same types of programs as the female offenders. He said something had to be worked out.

Mr. Ferriter said he did not directly work with the prison. He knew the wardens had spoken with the sponsor and he understood they felt they could manage the program with existing resources.

SEN. JERRY O'NEIL asked if a mother or father had problems with the Department of Family Services because they weren't spending time with their children and they didn't want to spend time with their children, but the treatment plan included a certain amount of time with the children. If during the course of that treatment plan, the parent went to prison, he felt the bill strongly encouraged the prison to reunite the parent and child. Maybe the

department couldn't take the child away while the parent was in prison. He asked if that was the intent. **REP. HURDLE** said no, in the given scenario, there were other problems, and custody could be terminated. The intent of the bill, however, was to ensure that incarceration ALONE was not reason to terminate custody.

SEN. O'NEIL questioned if the treatment plan specified Monday, Wednesday, and Friday visitation, but that wasn't followed and then visitation was limited because of incarceration, then would the parent be saved because they went to prison. **REP. HURDLE** said no. However, sometimes social workers were an obstacle to visitation. In those cases, maybe the bill provided an opportunity for a child to be brought to the prison to see the parent.

SEN. O'NEIL followed up by asking the cost of bringing the child to the prison. **REP. HURDLE** said it wasn't reflected in the fiscal note because it wasn't required. She noted that everything that was required had already been struck from the bill. She simply hoped that the bill would allow people to look at the situation. She said it was a national problem and she felt that Montanans could become aware of the situation. She said it was all permissive.

SEN. AL BISHOP said on page 4, lines 21-26 amended the bill extensively. In lieu of frequent, regular in-prison visits and overnight stays, structured programming was inserted. He said it didn't include all of the above, but wanted to know what it was. **Mr. Ferriter** replied the biggest concern in the House regarded overnight stays at either of the correctional facilities. That would be quite costly. Structured programming would be developed by the Department for a parenting program that would be supervised. He said it wasn't clearly defined, but would be developed, recognizing the safety concerns of the children, and to make sure the right kind of programming would be handed down.

SEN. BISHOP clarified that the structured programming could include in-prison visits on the part of the children. **Mr. Ferriter** said that was the intent of the bill for the child to come inside the prison to visit the parent.

SEN. BISHOP asked if that included overnight stays. **Mr. Ferriter** said no. That was eliminated because of safety issues.

CHAIRMAN GROSFIELD followed up questioning the difference between violent and non-violent offenders and if a distinction needed to be made as to who would interact with the children. **Mr. Ferriter** replied many offenders, women in particular, were in pre-release centers interacting with their children. He said there could be

some violent offenders in the parenting program. He said the sponsor pointed out that the judge could disqualify people from participating. If it was a serious offender, then they would be excluded. As time went on, and the violent offender was about to get out, then they might participate in the program. **SEN. STEVE DOHERTY** interjected saying the bill referenced 46-23-502. That section defined violent offenses for which the judge could deem the parent ineligible for the parenting program.

CHAIRMAN GROSFIELD commented that the bill was mostly focused on the women's prison. However, it didn't specifically target the women's prison. He asked if it could create a situation for legal action on equality grounds. **Mr. Scott Crichton, Executive Director of ACLU**, said there was always that possibility depending on the response. He noted all the facilities in the Montana prison system contained parents. He said the bill could be permissive to allow men and women in facilities beyond the two major facilities to have access to an integrated parenting plan. If there was no effort made to accommodate at all, then complaints might come. He said he felt the facilities could say they were doing their best with what they had in a permissive environment.

SEN. HOLDEN responded to that commenting that the tradition of the ACLU had been to sue, and not to allow facilities to say they were doing the best they could. He pointed out the prison situation and the state trying to work with what they had, but being sued to do more. **Mr. Crichton** replied there had been two suits against the state for conditions of confinement: 1) conditions at Montana State Prison post-riot. He said the suit continued and it dealt mostly with medical protocol. 2) following the agreement of the 1991 legislature to build a women's facility that included a parenting cottage and a parenting plan; when that bi-partisan agreement was not followed, a lawsuit ensued. He felt that they had been consistent in saying if people were incarcerated, then minimum conditions in decency in confinement, including medical protocols needed to be followed.

SEN. HOLDEN felt the ACLU was setting up the legislature to establish such things as parenting cottages, but then suing the state for not building one at another facility. He said the ACLU would argue that men and women deserved equal opportunity to parent their children while in prison. That began the race and financial obligations that could be unwieldy. **Mr. Crichton** suggested a sidebar discussion. He disagreed about how the ACLU ascertained where to put legal resources and at what point they decided to sue over conditions of confinement.

SEN. BISHOP clarified the program would be conducted through the Department of Corrections and not a court. **Mr. Ferriter** said yes. He reiterated that the Department was currently neutral on the bill. They saw positives and negatives with the bill. The amendments made it better. The Department was ready to move forward if the legislature saw fit.

SEN. BISHOP said the bill referred to children under the age of 13. He asked if a 12-year-old would be forced into the program and how they would be made to cooperate. **Mr. Ferriter** responded that the child may or may not be living with the other parent, they could be under the supervision of DPHHS. Whoever the primary person was, they would have some say as to the best interests of the child. He did not envision the Department forcing participation. He thought it would be worked out by a social worker or the person responsible for the child.

SEN. BISHOP said the bill dealt with custodial parents and who would determine what was best for the child. **Debra Kottel, representing herself**, said the bill did look at custodial parents. Although the offender had technical custody, in the majority of cases, the child entered into an extended family situation such as living with grandparents. They then had physical custody of the child even though parental rights had not been terminated. She then addressed the structured parenting plan. She noted that a wide range of programs existed throughout the U.S. HB 224 called for review of the current system to place parenting programs in with the treatment plan. The program could be as simple as providing videos and a facilitator to help the offender look at what it meant to be a parent. She referred to page 8 of **exhibit (11)** that many offenders were incarcerated because of drugs. The time in prison helped them become sober enough to recognize that parenting was a responsibility.

{Tape : 2; Side : B}

She noted these parenting programs also showed a parent how to interact with their child to promote true connection. She reiterated that the data was clear if the parent was reintegrated with the children, recidivism rates reduced dramatically. Also, the majority of parents would be reunited with their child, so HB 224 attempted to make sure it was done in the most positive way from the child's therapeutic point of view.

CHAIRMAN GROSFIELD understood that incarceration alone shouldn't lead to termination, but in the case of a mother with young children and a long sentence, how should that be dealt with?

REP. HURDLE said she didn't think the bill precluded that consideration. She said all the factors about permanency for the

child were included. Permanency within one year was specified. She acknowledged that the mother with a 20-year sentence wouldn't raise the child anyway.

Closing by Sponsor:

REP. HURDLE closed on HB 224 noting the wonderful program at the women's prison in Billings. The instructors of the parenting program obtained their own grants to conduct the programs, which made the offenders look at parenting in a new light. She suggested that the types of programs there could easily be implemented at the men's facility and should be. She noted that the men's warden was willing to seriously consider new programs for the inmates. She felt the bill allowed adjustments to be made to accommodate children and their parents.

ADJOURNMENT

Adjournment: 11:35 A.M.

SEN. LORENTS GROSFIELD, Chairman

ANNE FELSTET, Secretary

LG/AFCT

EXHIBIT (jus50aad)